

**Rules and Ancillary Document Review Checklist**

Document Reviewed (include title): **WAC 458-20-140 Photofinishers and photographers.**

Date last adopted: **3/15/1983**

Reviewer: **PAT MOSES**

Date review completed: **7/27/2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Explain the goal(s) and purpose(s) of the document:

This rule provides tax-reporting information and guidance for persons who are in business as either photofinishers or photographers. The rule is also used by departmental staff and promotes consistent application of tax to these businesses.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

- ◆ **The business activities of photofinishers and photographers are varied. As such, there are a number of B&O tax classifications that may apply, as well as the required collection or payment of sales tax on sales or supplies. These activities could easily be misclassified, and so this rule is necessary to promote consistent application of tax by both taxpayers and agency personnel.**

3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of



the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following documents contain information that could be incorporated into this rule.

- ♦ **ETA 125.08.140 SALE OF PHOTOGRAPHS TO SCHOOL CHILDREN** – photographer who uses schools as an agent to collect the price of prints from school children is the retail seller of the prints, for B&O and sales tax purposes.
- ♦ **13 WTD 183 (1993)** – Shooting fees are subject to retail sales tax when performed in connection with a contract for the imprinting of photographic negatives for a consumer.
- ♦ **12 WTD 101 (1993)** – Photo session fees are taxable under the Service and Other B&O tax classification when separately invoiced and paid from an order for prints.
- ♦ **12 WTD 369 (1992)** – Production and sale of negatives and transparencies for use in a retailer’s catalog is a retail sale.



The following ETAs can simply be repealed (see also ancillary document review checklists):

- ◆ **ETA 397.04.140 Photofinishing for out-of-state customers**
- ◆ **ETA 442.12.142 Film used to produce portraits**

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

- ◆ **This rule is relied upon by taxpayers and departmental staff to determine taxability and to promote consistency. A review of administrative decisions (WTD's) relating to this rule indicates that the rule is reasonable, clear, and to the point.**
- ◆ **The rule fails to recognize the Multiple Activities Tax Credit reporting requirements under RCW 82.04.440 and use tax reporting requirements. The rule should be revised to provide this information.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no", identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

- ◆ **RCW 82.32.300 authorizes the Department of Revenue to make and publish rules.**



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

- ◆ **The excise taxes addressed in this rule are the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

- ◆ **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- ◆ **This rule aids taxpayers by giving specific definitions, instructions and examples. The rule also promotes consistent and fair application of tax liabilities and corrections by agency staff.**

9. LISTING OF DOCUMENTS REVIEWED: (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)



Statute(s) Implemented: **To the extent the following apply to photofinishers and photographers:**

- ◆ **RCW 82.04.050 “Sale at retail,” “retail sale.”**
- ◆ **RCW 82.04.060 “Sale at wholesales,” “wholesale sale”**
- ◆ **RCW 82.04.110 “Manufacturer”**
- ◆ **RCW 82.04.120 “To manufacture.”**
- ◆ **RCW 82.04.190 “Consumer”**
- ◆ **RCW 82.04.220 Business and occupation tax imposed**
- ◆ **RCW 82.04.240 Tax on manufacturers**
- ◆ **RCW 82.04.250 Tax on retailers**
- ◆ **RCW 82.04.270 Tax on wholesalers, distributors**
- ◆ **RCW 82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting , government contractors – Cold storage warehouse defined – Storage warehouse defined – periodical or magazine defined.**
- ◆ **RCW 82.04.290 Tax on . . . other business or service activities**
- ◆ **RCW 82.04.440 Persons taxable on multiple activities—Credit (current rule implements the pre-August, 1997 statute)**
- ◆ **RCW 82.08.020 Tax imposed – Retail sales – Retail car rental.**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- ◆ **ETA 125.08.140 Sale of photographs to school children**
- ◆ **ETA 397.04.140 Photofinishing for out-of-state customers**
- ◆ **ETA 442.12.142 Film used to produce portraits**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

- ◆ **5 WTD 355 (1988)** – Coupons that can be redeemed for a free portrait are not a discounted purchase. The value of the item actually given for the coupon is a donation and its value is subject to use tax.
- ◆ **9 WTD 280 (1990)** – A photographer who pays commissions to a sales representative is not entitled to exclude those amounts from the taxable amount. They are a cost of doing business.
- ◆ **12 WTD 101 (1993)** – Photo session fees are taxable under the Service and other tax classification when invoiced and paid separately from an order for prints.
- ◆ **12 WTD 369 (1992)** – Negatives and transparencies sold for use in a retailer’s catalog are a retail sale.
- ◆ **12 WTD 425 (1992)** – A photographer who specifically retains ownership of the photographs and only grants a license to publish a photograph is not making a sale of tangible personal property.
- ◆ **13 WTD 183 (1993)** – Shooting fees are subject to retail sales tax when performed in connection with a contract for the imprinting of photographic negatives for a consumer.

Attorney General’s Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

♦ **Tax Topics #37, April – June 1995**

10. Review Recommendation:

☒ Amend

☐ Repeal

☐ Leave as is

☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

Explanation of recommendation: (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

Rule 140 should be amended to include information from ETA 125 and various WTDs. (See section #3.) The rule should also be brought up to date to make these taxpayers aware of the multiple activities tax credit reporting requirements for manufacturers. Rule 142 (Photographic equipment and supplies.) could easily be incorporated into this rule and eliminated as a stand-alone rule.

11. Manager action: Date: _____

_____ Reviewed recommendation _____ Accepted recommendation

_____ Returned for further action

Comments: